Women's Charter. Paragraphs (a) and (b) of section 80(1) are alternatives and it is sufficient if a petitioner complies with either of these two provisions but paragraph (c) is not an alternative provision. Section 80(1) must be read as a whole and it will be seen that paragraph (c) is a mandatory requirement. A husband seeking a divorce must comply with either paragraphs (a) and (c) or paragraphs (b) and (c). The effect of paragraph (c), which applies in every case, is that if the husband is not domiciled in Singapore at the time his petition is presented, the court has no power to grant him a decree of divorce.

There are special provisions in the Women's Charter which give the court jurisdiction to entertain proceedings by a wife although her husband is not domiciled or resident in Singapore, but these were of no help to the petitioner in this case.

For these reasons I held that on the facts of this case the court had no power to grant the petitioner a decree of divorce. Leave to withdraw the petition was granted.

Order accordingly.

Solicitors: *K.L. Tham & Co.; R. Ramason.*

RE PAN-MALAYSIA INDUSTRIES LTD. TAY AH KEE & ANOR. v. CENTRAL PROVIDENT FUND BOARD

[O.C.J. (Choor Singh J.) August 10, 1978]
[Singapore — Originating Summons No. 175 of 1978]

Companies — Appointment of receiver at instance of debenture holder — Assets of company insufficient to meet claim of debenture holder in full — Contributions to Central Provident Fund — Company ordered to pay arrears of contributions — Priorities — Central Provident Fund Act (Cap. 121), ss. 14 and 17(1) — Companies Act (Cap. 185), ss. 191 and 292.

Provident Fund — Contributions to C.P.F. — Priorities — Arrears — Assets of company insufficient to meet claim of debenture holder — Companies Act (Cap. 185), ss. 191 & 292 — Central Provident Fund Act (Cap. 121), ss. 14 & 17(1).

In this case the Pan-Malaysia Industries Ltd. had failed to pay contributions to the Central Provident Fund in respect of certain of its employees. The company was charged for failure to do so and was convicted and fined. In addition the company was ordered to pay arrears of contributions amounting to $48,493.30. The Company paid $10,483.25 leaving a balance of $38,010.05 due and owing to the Central Provident Fund Board. Subseqently the plaintiffs were appointed receivers and managers of the Company at the instance of the Chase Manhattan Bank pursuant to the provisions of three debentures created by the Company in favour of the Bank. The assets of the company were insufficient to meet the claim of the debenture holders in full so that if the claim of the Central Provident Fund Board were postponed to the claim of the debenture holders, the Board would not be able to get anything. It was contended by the plaintiffs that having regard to the provisions of sections 191 and 292 of the Companies Act, only a sum of $13,276.16 (being contributions payable during the 12 months previous to the appointment of the receivers) would be payable by way of preferential payment before the claim of the debenture holders were met. The defendants contended that the whole of the sum of $38,010.15 was payable to them in preference to any claim of the debenture holders.

Held: in the circumstances of the case, the Board was entitled to rank as preferential creditor for the sum of $13,276.16. As regards the balance of $24,733.89 due to the Board, payment of this sum had to be postponed until after the debenture holders had been paid.

Case referred to:-

(1) *In re Herbert Berry Associates Ltd.* [1977] 1 W.L.R. 617.

ORIGINATING SUMMONS.

Goh Heng Leong for the plaintiffs.
P. Selvadurai for the defendants.

Cur. Adv. Vult.

Choor Singh J.: The point in issue to be determined in this Originating Summons is whether a debenture holder has a prior right than the Central Provident Fund Board to the assets of a company when a receiver of the company has been appointed by the debenture holder.

The facts which are not in dispute are these. The Pan-Malaysia Industries Ltd. was summoned to appear in a magistrate's court on April 2, 1976 on twelve counts of failing to pay contributions to the Central Provident Fund Board in respect of certain of their employees.

The Company pleaded guilty and was fined a total of $1,800 being $150 for each of the twelve counts. This fine was paid. In addition, the Company was ordered to pay the arrears of the Central Provident Fund contributions amounting to $48,493.30 to the Central Provident Fund Board. The Company paid two sums totalling $10,483.25 leaving a balance of $38,010.05 still due and owing to the Central Provident Fund Board.

By a Notice of Appointment dated January 26, 1977 the plaintiffs were appointed Receivers and Managers of the Company at the instance of the Chase Manhattan Bank (National Association) pursuant to the provisions of three debentures created by the Company in favour of the said bank.

On December 17, 1977 the Central Provident Fund Board applied to the magistrate's court, under section 214(b)(iii) of the Criminal Procedure Code for the issue of a warrant for the levy of the amount of $38,010.05 by distress and sale of the property of the Company. A warrant was issued but distress was not levied as a stay of execution was granted pending the determination of the issue of priorities.

All the assets of the Company have been realised and the the net proceeds of sale of the whole of the assets of the Company are insufficient to meet the claim of the debenture holders in full so that if the claim of the Central Provident Fund Board is postponed until after the claim of the debenture holders have been paid in full there will be no assets out of which payment can be made to the Central Provident Fund Board.

The plaintiffs contend that having regard to the provisions of sections 191 and 292 of the Companies Act, a sum of $13,276.16 only falls to be paid out of the assets of the Company in the hands of the receivers to the defendants by way of a preferential payment before the claim of the debenture holders are met, while the balance of $24,733.89 is payable to the defendants only after the debenture holders have been paid in full.

The defendants on the other hand contend that the whole of the amount of $38,010.15 is payable to them in preference to any claim of the debenture holders.

To determine the question of priorities it is necessary to look at all the relevant statutory provisions. Section 14 of the Central Provident Fund Act provides as follows:—

"14. If any person—

(a) xxx xxx xxx

(b) fails to pay to the Fund within such period as may be prescribed any amount which he is liable under this Act to pay in respect of or on behalf of any employee in any month

he shall be guilty of an offence under this Act."

Section 17(1) of the Central Provident Fund Act provides as follows:—

"17.—(1) Any person convicted of an offence under this Act for which no penalty is provided shall be liable to a fine not exceeding two thousand five hundred dollars and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars and the court before which such conviction is had may in addition to such fine order him to pay the amount of any contribution together with any interest due thereon certified by an officer appointed by the Board in that behalf to be due from such person at the date of such conviction and such amount may be recovered according to the law for the time being in force for the recovery of fines."

Section 191 of the Companies Act provides as follows:—

"191.—(1) Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then if the company is not at the time in the course of being wound up, debts which in every winding up are preferential debts and are due by way of wages, salary, vacation leave or superannuation or provident fund payments and any amount which in a winding up is payable in pursuance of subsection (3) or subsection (5) of section 292 shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and shall be paid in the same order of priority as is prescribed by that section in respect of those debts and amounts.

(2) For the purposes of subsection (1) of this section the references in paragraphs (b), (c), (d) and (e) of subsection (1) of section 292 to the commencement of the winding up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid (as the case requires).

(3) All payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors."

Section 292 of the Companies Act provides as follows:—

"292.—(1) Subject to the provisions of this Act, in a winding up there shall be paid in priority to all other unsecured debts—

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the company as the employer of any person under any written law relating to employees superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under the law relating to income tax; and"

It is contended on behalf of the defendants that section 17 of the Central Provident Fund Act lays down machinery for the recovery of Central Provident Fund contributions as though they were a fine imposed by the court as a penalty; that over and above the civil remedies available to the Board, it has been invested with powers to invoke criminal sanctions against a defaulting employer and that the order of court in criminal proceedings cannot be stultified by the appointment of a receiver by debenture holders under the Companies Act. Counsel submitted that for reasons of public policy the criminal distress ordered by the Magistrate should be allowed to proceed and the Board allowed to recover the full amount of $38,010.05. Counsel also cited the decision in *In re Herbert Berry Associates Ltd.*,[1] in support of his submission.

In my judgment this is not a contention which can succeed. First, the decision in the *Herbert Berry* case is of no help to the defendants. The question in that case was what effect a voluntary winding up has upon a distress levied before the commencement of the winding up and it was decided that the court has a discretion to deprive someone who has levied a distress which is not complete at the commencement of the winding up of the fruits of that distress or some part of them, if equity so requires. The facts of this case and the point in issue here are entirely different.

In my judgment, section 17 of the Central Provident Fund Act lays down summary procedure for the recovery of arrears of contributions due to the Central Provident Fund Board. Instead of suing a defaulting employer in a civil court for the amount due from him, all that the Board need do is to take out a summons in a magistrate's court under section 17 of the Central Provident Fund Act. The effect of the magistrate's order made under section 17 is to give the Board the right to levy execution against the property of the defaulting employer for the amount due to the Board. An order made by the magistrate under section 17 has the effect of summary judgment in favour of the Board. It does not confer any priority which otherwise the Board does not have. The magistrate's order does not alter the statutory scheme of distribution laid down in section 191 read with section 292 of the Companies Act. The effect of the provisions of these two sections of the Companies Act is that the Board is entitled to rank as a preferential creditor for the contributions payable by an employer during the 12 months next before the commencement of the winding up of a company or the date of the appointment of a receiver.

On the facts of this case the Board is entitled to rank as a preferential creditor for the sum of $13,276.16. As regards the balance of $24,733.89 due to the Board, payment of this sum has to be postponed until after the debenture holders have been paid.

Order accordingly.

Solicitors: *Allen & Gledhill; Rodyk & Davidson.*